



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND
MUNICIPAL EMPLOYEES, COUNCIL 68, AFL-CIO

Complainant

v.

TOWN OF WOLFEBORO

Respondent

CASE NO. A-0496:2 (includes A-0496:1
Town of Wolfeboro v. AFSCME
Declaratory Judgement and
A-0509 - Town of Wolfeboro
v. AFSCME, ULP)

DECISION NO. 85-07

APPEARANCES

Representing the American Federation of State, County and Municipal Employees,
Council 68, AFL-CIO

Gary Foster, Administrator, Council 68

Representing the Town of Wolfeboro

Daniel D. Crean, Esq., Counsel

Also in Attendance

Peter Brewitt, Chairman, Board of Selectmen
W.E. Erickson, Selectman
Guy L. Krapp, Town Manager
James C. Anderson, AFSCME
George Elkins
Don Campbell
David Ridings
James Champagne
Barry Kimball

BACKGROUND

AFSCME, Council 68, was certified by the Public Employee Labor Relations Board, as exclusive bargaining representative for certain employees of the Town of Wolfeboro on June 8, 1984. By correspondence dated August 14, 1984, AFSCME submitted an "official written notification" of intent to begin negotiations on a contract starting January 1, 1985. AFSCME was well within the 120 day guidelines established by RSA 273-A:1, III.

Discussion on negotiation ground rules between Wolfeboro and AFSCME began but resulted in impasse over meeting schedules and Wolfeboro filed a petition for Declaratory Ruling with the Public Employee Labor Relations Board (A-0496:1), on September 26, 1984, dealing with necessary meeting times for negotiations, executive sessions and the size of the union negotiating team.

On September 27, 1984, AFSCME filed unfair labor practice charges against the Town of Wolfeboro (A-0496:2). AFSCME and the Town had met to discuss the ground rules for negotiations but could not agree on a subsequent meeting time. AFSCME charged that the Town was refusing to negotiate in good faith, a violation under RSA 273-A:5, I (e) and (g). The Town denied any breach of RSA 273-A and pointed out that they (Town and Union) had simply failed to agree on ground rules, including the scheduling of future meetings, and that they (Town) viewed as unreasonable the size (for reimbursement) of the union negotiating team but had never refused to meet at reasonable times and with a reasonable number of employees on the negotiating team.

On October 5, 1984, the Town filed unfair labor practice charges against AFSCME, Council 68 (A-0509) alleging that AFSCME's representative at the ground rules meeting (Gary Foster) was making the negotiations unnecessarily complex; refusing to meet except during working hours; displaying a "threatening and abusive attitude", including verbal abuse of the Town's negotiating team and the chairman (Mr. Brewitt); threatening economic loss to Mr. Brewitt and others by Public Employee Labor Relations Board hearings, etc.; and, otherwise interfering with the Town of Wolfeboro's ability to represent itself, violating RSA 273-A:5, II (b) and (d).

The union denied any violation of RSA 273-A, pointing out that tentative agreement or written guidelines had been reached at the September 25, 1984, meeting; that AFSCME had suggested other meeting times (than 7:00 p.m.) but the Town had not; the union had not withdrawn its agreement to the ground rules but the Town had (when the union consented to meet at some time other than 7 p.m.); and, specifically denied trying to interfere with the Town's ability to represent itself.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on November 13, 1984. The three (3) petitions discussed above were combined into one hearing, given the identical factual circumstances surrounding each set of questions/charges, with no objections raised to this procedure.

FINDINGS OF FACT

After hearing considerable testimony and studying the few exhibits, the following facts clearly emerged:

- (1) following certification of AFSCME, Council 68 as the bargaining representative for certain employees of the Town of Wolfeboro (32) by letter dated August 14, 1984, AFSCME submitted a notice they wished to begin negotiations;
- (2) on August 28, 1984, the Town responded by telephone suggesting a meeting on September 13, 1984, at 7:00 p.m.;
- (3) on August 30, 1984, AFSCME and the Town agreed on the compromise of September 25, 1984, at 4:00 p.m. for the purpose of adopting ground rules for successive negotiations;

- (4) at the meeting of September 25, 1984, the Union, although not favoring written ground rules, was able to agree tentatively to a set of written ground rules with the Town but all agreement "vanished" at the end of the meeting when the two sides could not agree on a time to meet again - the Union favoring a work time meeting and the Town favoring evening, non-work time meeting. The Town then also questioned the size of the (compensated) union negotiating team, if meetings were to take place during their work time, since this might cause problems for the Town. The union representatives became upset and the atmosphere deteriorated considerably.

RULINGS OF LAW

- (1) The Public Employee Labor Relations Board has never ruled that all negotiation sessions must be either during work time or non-work time. Under RSA 273-A:3, the requirement is to "negotiate in good faith" and we have interpreted this to mean that neither side can dictate the meeting schedule (Educational Support Personnel Association of Portsmouth, NEA/NH v. Portsmouth School Board, Public Employee Labor Relations Board decision #84-84) but rather that a mixture of times and/or dates would demonstrate a willingness on the part of both sides to accomodate each other and likely bring about the necessary atmosphere for them to "negotiate in good faith". The failure of the two parties, in this case, to reach any such agreement is the result of the hostile atmosphere surrounding their initial meeting. In this sense, both sides are guilty of a failure to "negotiate in good faith".
- (2) The Public Employee Labor Relations Board prefers to leave the size and composition of the respective negotiating teams to the parties involved and declines to make any declaratory ruling on this issue at this time.
- (3) The Public Employee Labor Relations Board has in the past held that negotiation sessions will normally be closed door meetings between the negotiators unless both sides agree to hold open, public sessions. The Public Employee Labor Relations Board feels strongly that the interests of the public and the efficiency of government as well as the interests of the public employees and the public employer are best safeguarded by a process that encourages forthright negotiation between the parties and avoids extraneous factors as much as possible. We continue to hold this view and reiterate that negotiating sessions will be closed to the public unless both sides agree to some other procedure.

DECISION AND ORDER

The Public Employee Labor Relations Board finds that both the Union and the Town by their mutual stubbornness, contributed to an atmosphere which cannot be characterized as "good faith negotiations" and which therefore constitutes a violation of RSA 273-A:5.

The Public Employee Labor Relations Board therefore issues the following order:

- (1) the parties will resume negotiating as soon as possible;
- (2) the next meeting will take place at 4:00 p.m.;

- (3) both sides will negotiate a schedule of meetings or an agreed upon formula for such for one month at a time, failing this the Public Employee Labor Relations Board will set the formula;
- (4) all negotiating sessions, including any session to agree on ground rules, will be closed unless both sides agree otherwise;
- (5) both parties are to report progress to the Public Employee Labor Relations Board within thirty (30) days and no later than February 16, 1985.


ROBERT E. CRAIG, CHAIRMAN

Signed this 18th day of January, 1985.

By unanimous vote. Chairman Robert E. Craig presiding. Members Seymour Osman, Richard Roulx and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.